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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 148 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CHETAN CHEMICALS PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 148 of 1988
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 23/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income-tax Appellate Tribunal has referred the following question at the instance of the revenue for the opinion of this Court :-

"Whether on the facts and in the circumstances of the case, the Tribunal is right in holding that amount of Rs.1,77,052 arising from the remission in the unsecured liability, is not taxable in the hands of the assessee ?"

2. The assessee, a private limited Company, was incorporated in the year 1974-75 as required under the Companies Act, 1956. Since 1976 the Company was operating its factory at Nandesari, District Baroda wherein commercial production of various inorganic chemicals was being carried on. The assessment year is 1982-83 and the accounting period is the year ended on 30.6.1981. The Company maintained its accounts as per mercantile system of accounting. In the course of carrying on its business, the Company had obtained unsecured loans from various creditors, and in light of the financial difficulties faced by the Company, the creditors approached the High Court by filing various Company Petitions. During the course of those proceedings, it transpires that, a compromise was reached between the assessee Company and its creditors wherein as per the terms of the compromise certain creditors remitted unsecured loans amounting to Rs.1,77,052/-. At the same time, interest which had accrued in favour of the creditors amounting to Rs.2,96,171/- was also remitted. Such remitted interest was declared by the assessee as income liable to tax under Section 41(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") while filing its return of income, but the remission of loans amounting to Rs.1,77,052/- was not returned as income liable to tax.

3. The Income-tax Officer treated the aforesaid remission of loans as a benefit accruing to the Company during the course of its business activity and brought to tax the same by invoking provisions of Section 28(iv) of the Act. The Commissioner of Income-tax (Appeals) confirmed the assessment order and the assessee approached the Tribunal. The Tribunal for the reasons recorded in its order held that the remission of unsecured loans could not be subjected to tax by invoking provisions of Section 28(iv) read with Section 41(1) of the Act.

4. We have heard Mr Akil Kureshi, learned Standing Counsel appearing on behalf of the applicant-revenue.

Though served, none appears on behalf of the respondent-assessee. At the time of hearing, Mr Kureshi invited our attention to provisions of Section 41(1) of the Act and contended that this was a liability in so far as the assessee Company was concerned and such liability had been remitted by the creditors of the Company, and thus a benefit had been obtained by the assessee Company which was liable to payment of tax under Section 41(1) read with Section 28(iv) of the Act.

5. Section 41(1) as was applicable for the assessment year under consideration reads as under :-

> "(1) where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee, and subsequently during any previous year the assessee has obtained, whether in cash or in any other manner whatsoever, any amount is respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by him or the value of benefit accruing to him, shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business of profession in respect of which the allowance or deduction has been made is in existence in that year or not."

On a reading of the provisions, it is apparent that before the Section can be invoked, it is necessary that an allowance or a deduction has been granted during the course of assessment for any year in respect of loss, expenditure or trading liability which is incurred by the assessee, and subsequently during any previous year the assessee obtains, whether in cash or in any other manner, any amount in respect of such trading liability by way of remission or cessation of such liability. In that case, either the amount obtained by the assessee or the value of the benefit accruing to the assessee can be deemed to be the profits and gains of a business or profession and can be brought to tax as income of the previous year in which such amount or benefit is obtained. In the facts of the case on hand, without entering into the aspect as to whether the liability to repay the loans would be a trading liability or not, it is an admitted position that there had been no allowance or deduction in any of the preceding years and hence, there is no question of applying the provision as such.

6. Section 28 of the Act deals with profits and gains of business or profession and clause (iv) thereof says that the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession shall be chargeable as income under the head Profits and Gains of business or profession. In the facts of the present case, it cannot be said that the assessee Company was carrying on business of obtaining loans and that the remission of such loans by the creditors of the Company was a benefit arising from such business.

7. In light of the aforesaid legal position, we do not find any infirmity in the order of the Tribunal. The Tribunal was right in holding that the amount of Rs.1,77,052/- arising as a result of remission of unsecured loans was not taxable in the hands of the assessee. The question referred to us is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-